

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 05-0366P**

**Income Tax  
For Tax Years 1996**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration—Negligence Penalty**

**Authority:** IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent negligence penalty.

**STATEMENT OF FACTS**

Taxpayer operates a nationwide business. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for base tax, penalty and interest for the tax years 1996 through 1998. Taxpayer paid an amount equal to the base assessments and interest, but protests the imposition of penalty for 1996. Further facts will be supplied as required.

**I. Tax Administration—Negligence Penalty**

**DISCUSSION**

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty and states that the only reason it had assessments for that year was that it agreed to new filing methods required by the Department, but that it did not have unreasonable filing methods prior to the new agreement. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...  
the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a new assessment which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). As part of this protest, taxpayer has established that the new assessment for 1996 was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

### **FINDING**

Taxpayer's protest is sustained.

WL/BK/DK October 17, 2006